## REMARKS

Claims 1-42 are pending in the application. Claims 1-42 stand rejected. Claims 12, 17, 25, 30, 34, and 38 have been amended. Claim 12 has been amended to recite "at least one previously stored," which has been added before "circumstantial data." Support for the amendment is found in the Specification, e.g., at page 51, lines 5-31; page 57, lines 13-31; page 58, lines 1-17. Claim 17 has been amended to recite "determining a level of trust associated with the authentication operation based on the comparison of the metadata with previously stored data." Support for the amendment is found in the Specification, e.g., at page 51, lines 5-31; page 57, lines 13-31; page 58, lines 1-17. Claim 25 has been amended to recite "determining a level of trust associated with the authentication operation based on the comparison of the metadata with previously stored data." Support for the amendment is found in the Specification, e.g., at page 51, lines 5-31; page 57, lines 13-31; page 58, lines 1-17.

Claim 30 has been amended to recite "defining the level of trust of the authentication operation based upon a comparison of the acceptability of the instant authentication data with previously stored authentication data and based upon a comparison of the reliability of the authentication techniques used in generating the authentication data with previously stored data." Support for the amendment is found in the Specification, e.g., at page 51, lines 5-31; page 55, lines 9-31; page 56. lines 1-10, 16-31; page 57, lines 1-12.

Claim 34 has been amended to recite "a trust engine which determines a level of match associated with each authentication instance and assigns a level of trust for the authentication attempt based upon a comparison of the level of match associated with each authentication instance and previously stored reliability data, and based upon a comparison of the reliability of the authentication technique used in each authentication instance with previously stored data. Support for the amendment is found in the Specification, e.g., at  page 51, lines 5-31; page 55, lines 9-31; page 56. lines 1-10, 16-31; page 57, lines 1-12.

Claim 38 has been amended to recite "defining a level of trust of the authentication attempt based upon a comparison of the level of match associated with each authentication instance and previously stored reliability data, and based upon a comparison of the reliability of the authentication technique used in each authentication instance with previously stored data.

Support for the amendment is found in the Specification, e.g., at page 51, lines 5-31; page 55, lines 9-31; page 56. lines 1-10, 16-31; page 57, lines 1-12.


## I. REJECTIONS UNDER 35 U.S.C. § 102

**A. Rejection of claims 12-42 under 35 U.S.C. § 102(e) as being anticipated by Wood et al. (U.S. Patent No. 6,691,232)**

The Examiner has maintained the rejection of claims 12-42 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,691,232, issued to Wood et al. ("Wood"). Office Action of April 21, 2005 at page 3. Applicants respectfully traverse.

To properly maintain a rejection under § 102, the Examiner must show that each and every limitation of the claim of the present invention is anticipated by the alleged prior art. *In re Bond*, 15 USPQ2d 1896 (Fed. Cir. 1991). The cited reference does not teach each and every element of claims 12-42.

The Examiner admits that Wood fails "to show authentication attempted *based on the comparison of the circumstantial data with previously stored data*." Office Action of June 28, 2004 at page 9. Independent claim 12, and dependent claims 13-16, as amended state "a trust engine which generates a level of trust associated with a current authentication attempt *based on the comparison of circumstantial data* associated with the current authentication attempt with *said at least one previously stored circumstantial data* associated with the at least one previously successful authentication attempt" (emphasis added). Because the Examiner admits that Wood fails to teach authentication of data based upon comparison with previously stored data, Wood does not teach each and every element of claims 12-16. Therefore, claims 12-16 are not anticipated by Wood.

Independent claim 17, and dependent claims 18-24, as amended state "*comparing the metadata with previously stored data*; and determining a level of trust associated with the authentication operation *based on the comparison of the metadata with previously stored data*" (emphasis added). Because the Examiner admits that Wood fails to teach authentication of data based upon comparison with previously stored data, Wood does not teach each and every element of claims 17-24. Therefore, claims 17-24 are not anticipated by Wood.

Independent claim 25, and dependent claims 26-29, as amended state "determining a level of trust associated with the authentication operation *based on the comparison of metadata with previously stored data*" (emphasis added). Because the Examiner admits that Wood fails to teach authentication of data based upon comparison with previously stored data, Wood does not teach each and every element of claims 25-29. Therefore, claims 25-29 are not anticipated by Wood.

Independent claim 30, and dependent claims 31-33, as amended state "defining the level of trust of the authentication operation *based upon a comparison of the acceptability of the instant authentication data with previously stored authentication data* and *based upon a comparison of the reliability of the authentication techniques used in generating the authentication data with previously stored data*" (emphasis added). Because the Examiner admits that Wood fails to teach authentication of data based upon comparison with previously stored data, Wood does not teach each and every element of claims 30-33. Therefore, claims 30-33 are not anticipated by Wood.

Independent claim 34, and dependent claims 35-37, as amended state "a level of trust for the authentication attempt *based upon a comparison of the level of match associated with each authentication instance and previously stored reliability data*, and *based upon a comparison of the reliability of the authentication technique used in each authentication instance with previously stored data.*" (emphasis added). Because the Examiner admits that Wood fails to teach authentication of data based upon comparison with previously stored data, Wood does not teach each and every element of claims 34-37. Therefore, claims 34-37 is not anticipated by Wood.

Independent claim 38, and dependent claims 39-42, as amended state "defining a level of trust of the authentication attempt *based upon a comparison of the level of match associated with each authentication instance and previously stored reliability data* and *based upon a comparison of the reliability of the authentication technique used in each authentication instance with previously stored data.*" (emphasis added). Because the Examiner admits that Wood fails to teach authentication of data based upon comparison with previously stored data, Wood does not teach each and every element of claims 38-42. Therefore, claims 38-42 are not anticipated by

Wood, and Applicants respectfully request reconsideration and withdrawal of the present rejection.

Applicants respectfully submit that the present rejection should be withdrawn because the Examiner obviousness rejection is improper. Therefore, Applicants respectfully request that the present rejection of claims 12-42 under 35 U.S.C. § 102(e) be reconsidered and withdrawn.

## II. REJECTIONS UNDER 35 U.S.C. § 103

**A. Rejection of claims 1-11 under 35 U.S.C. § 103(a) as being unpatentable over Wood in view of Khan et al. (U.S. Patent No. 6,401,206)**

The Examiner rejected claims 1-11 under 35 U.S.C. § 103(a) as being unpatentable over Wood, in view of U.S. Patent No. 6,401,206, issued to Khan et al. ("Khan"). Office Action of April 21, 2005 at page 3. Applicants respectfully traverse. Applicants assert that the Examiner has failed to establish a *prima facie* case of obviousness because (1) Wood fails to teach or suggest each and every element of the claimed invention and (2) combining the references of record fails to teach or suggest each and every element of the claimed invention.

To maintain a proper rejection under 35 U.S.C. § 103, the Examiner must meet four conditions to establish a *prima facie* case of obviousness. First, the Examiner must show that the prior art suggested to those of ordinary skill in the art that they should make the claimed composition or device or carry out the claimed process. Second, the Examiner must show that the prior art would have provided one of ordinary skill in the art with a reasonable expectation of success. Both the suggestion and the reasonable expectation of success must be adequately founded in the prior art and not in an applicant's disclosure. Third, the prior art must teach or suggest all the claim limitations. *In re Vaeck*, 20 U.S.P.Q.2d 1438, 1442 (Fed. Cir. 1991). Fourth, if an obviousness rejection is based on some combination of prior art references, the Examiner must show the suggestion, teaching, or motivation to combine the prior art references. *In re Dembiczak*, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999).

The Examiner admits that Wood fails "to show authentication attempted based on the comparison of the circumstantial data with previously stored data." Office Action of June 28, 2004 at page 9. The Examiner attempts to cure the deficiency by combining Wood with the

teachings of Khan to meet the limitations of claim 1. Id. at page 9. Khan states "[a]t the point of verification, the device is inserted into the verification machine that asks the individual to authenticate himself by carrying out a brief *question and answer session.*" Khan at col. 13, lines 20-23 (emphasis added). However, in contrast with the Examiner's assertions, questions from a question and answer session do not fall under Applicants' definition of "circumstantial data."

Applicants define circumstantial data as "information such as: the time at which the particular authentication instance took place, the network address from which the authentication information was delivered, as well as any other information as it is known to those of skill in the art which may be determined about the origin of the authentication data (the type of connection, the processor serial number, etc.)." Specification at page 52, lines 14-19. Accordingly, Khan does not teach or suggest, singly or in combination with Wood, "determining a level of trust associated with the authentication attempt based on the comparison of the circumstantial data with previously stored data." Rather, Khan relates to a device for verification, not "information...which may be determined about the *origin* of the authentication data." Specification at page 52, lines 17-18 (emphasis added). Khan does not teach comparison of circumstantial data with previously stored data, and thus, Khan does not make up for the deficiency of Wood. Therefore, independent claim 1 and dependent claims 2-11 are not obvious over Wood in view of Khan, and Applicants respectfully reconsideration and withdrawal of the present rejection.

Applicants respectfully submit that the present rejection should be withdrawn because the Examiner's *prima facie* obviousness rejection is improper. Therefore, Applicants respectfully request that the present rejection of claims 1-11 under 35 U.S.C. § 103(a) be reconsidered and withdrawn.
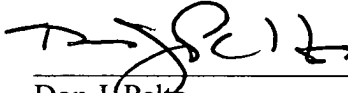
## CONCLUSION

Applicants have properly stated, traversed, accommodated, or rendered moot each of the Examiner's grounds for rejection. Applicants submit that the present application is now in condition for allowance.

If the Examiner has any questions or believes further discussion will aid examination and advance prosecution of the application, a telephone call to the undersigned is invited. If there are any additional fees due in connection with the filing of this amendment, please charge the fees to undersigned's Deposit Account No. 50-1067. If any extensions or fees are not accounted for, such extension is requested and the associated fee should be charged to our deposit account.

Respectfully submitted,

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